



Executive Committee

Filed: 3/21/2007

09500HB1834ham001

LRB095 10034 MJR 33385 a

1 AMENDMENT TO HOUSE BILL 1834

2 AMENDMENT NO. _____. Amend House Bill 1834 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Public Utilities Act is amended by adding
5 Article XXI as follows:

6 (220 ILCS 5/Art. XXI heading new)

7 ARTICLE XXI. CLEAN COAL DEVELOPMENT PROGRAM LAW

8 (220 ILCS 5/21-101 new)

9 Sec. 21-101. Short title. This Article may be cited as the
10 Clean Coal Development Program Law.

11 (220 ILCS 5/21-105 new)

12 Sec. 21-105. Findings. The General Assembly finds that:

13 (a) Growth of the State's population and economic base has
14 created a need for new baseload electric generation capacity in

1 Illinois.

2 (b) Illinois has considerable natural resources that are
3 currently underutilized and could support development of new
4 baseload electric power at an affordable price.

5 (c) The development of new baseload electric generating
6 capacity is needed if the State is to continue to be successful
7 in attracting new businesses and jobs.

8 (d) Certain regions of the State, such as central and
9 southern Illinois, could benefit greatly from new employment
10 opportunities created by development of baseload electric
11 generating plants utilizing the plentiful supply of Illinois
12 Basin coal.

13 (e) Technology can be deployed that allows high sulfur
14 Illinois Basin coal to be burned efficiently while meeting
15 strict State and federal air quality limitations.
16 Specifically, the State shall encourage the use of advanced
17 clean coal technology, such as Integrated Gasification
18 Combined Cycle (IGCC) technology.

19 (f) The development of new baseload electric generating
20 plants, as contemplated in the Clean Coal Development Program
21 Law, will create benefits to all consumers of electricity in
22 the State. Such benefits will include lower and more stable
23 prices for electricity.

24 (220 ILCS 5/21-110 new)

25 Sec. 21-110. Definitions. For the purposes of this Article,

1 the following terms shall be defined as set forth in this
2 Section.

3 The terms defined in Section 16-102 of the Public Utilities
4 Act have the meanings ascribed to them in that Act.

5 "Actual total capital costs" means, as more specifically
6 set forth in the service agreement or agreements for a clean
7 coal project, the total initial capital costs recoverable by
8 such clean coal project pursuant to its wholesale sales tariff
9 upon completion of such clean coal project.

10 "CCN" means a certificate of convenience and necessity.

11 "Clean coal project" means any existing or planned electric
12 generating project that has a wholesale tariff pursuant to the
13 Federal Power Act and that is designed (1) to have a nameplate
14 capacity of no less than 400 megawatts gross, (2) to be
15 directly interconnected with a participating electric utility,
16 (3) to utilize integrated gasification combined cycle
17 technology, and (4) to utilize as its primary fuel or feedstock
18 coal having high volatile bituminous rank and greater than 1.7
19 pounds of sulfur per million Btu content and for which a final
20 air permit has been issued that:

21 (1) describes the project as having a designed
22 nameplate capacity of no less than 400 megawatts gross; and

23 (2) provides that the project's emissions shall not
24 exceed the following standards:

25 (A) with respect to NO_x, 0.035 lbs./MMBtu;

26 (B) with respect to PM₁₀ Total (filterable and

1 condensable), 0.025 lbs./MMBtu;

2 (C) with respect to SO₂, 0.02 lbs. / MMBtu; and

3 (D) with respect to mercury, 0.00002 lbs. / MWh.

4 The standards above that are described in lbs. / MMBtu are
5 to be expressed as MMBtu of heat input to the combined cycle
6 gas turbines of a clean coal project. When warranted by the
7 usage, "clean coal project" shall mean the owner, operator, or
8 lessee of a clean coal project.

9 "Core plant construction cost ceiling" means, as more
10 specifically set forth in the service agreement or agreements
11 for a given clean coal project, \$1 per kilowatt of net design
12 capacity of a clean coal project expressed in January 2007
13 nominal dollars, adjusted for inflation using the producer
14 price index published by the U.S. Bureau of Labor Statistics to
15 the date upon that the core plant construction cost quote for
16 such clean coal project is expressed.

17 "Core plant construction cost quote" means, as more
18 specifically set forth for a clean coal project in the
19 applicable service agreement or agreements, a price quote or
20 estimate prepared by a reputable engineering and construction
21 services firm (or group of firms) for the costs payable to one
22 or more contractors or suppliers for the engineering,
23 procurement, and construction of the core plant facilities
24 comprising a clean coal project. Such core plant facilities
25 shall include all civil, structural, mechanical, electrical,
26 control, and safety systems associated with the following major

1 core plant functional areas: air separation, coal grinding and
2 slurry preparation, gasification and high temperature
3 synthesis gas cooling, low temperature synthesis gas cooling,
4 acid gas removal, sulfur recovery, tail gas treatment, combined
5 cycle power block, coal fines and slag handling, and water and
6 wastewater treatment at the plant site. The quote or estimate
7 shall be based on detailed design work sufficient to permit
8 quantification of major categories of materials, commodities,
9 and labor man hours, and receipt of quotes from vendors of
10 major equipment packages. The costs shall be expressed in
11 nominal dollars as of the date of the estimate and shall be
12 exclusive of construction financing costs, taxes, insurance,
13 and an escalation in materials and labor beyond the date as of
14 which the core plant construction cost quote is expressed,
15 costs associated with non-core plant interconnection
16 facilities for electric transmission, natural gas supply,
17 water supply and coal delivery, and other non-core plant costs.
18 For purposes of Section 21-145, the core plant construction
19 cost quote shall be expressed in nominal dollars per kilowatt
20 of net design capacity of the clean coal project by dividing
21 the core plant construction cost quote by the net design
22 capacity of the clean coal project.

23 "Department" means the Department of Commerce and Economic
24 Opportunity.

25 "FERC" means the Federal Energy Regulatory Commission, an
26 independent regulatory commission within the Department of

1 Energy established by Section 401 of the Department of Energy
2 Organization Act, or any agency succeeding to the powers
3 thereof under Section 205 of the Federal Power Act.

4 "Final air permit" means a Prevention of Significant
5 Deterioration of Air Quality (PSD) construction permit issued
6 pursuant to a final decision or order made on or before
7 December 31, 2010.

8 "Formula rate" means a formula used to calculate a
9 cost-based rate for the sale of electric capacity and
10 associated energy from a clean coal project set forth in the
11 applicable wholesale sales tariff.

12 "FutureGen demonstration project" means a 10-year
13 demonstration project sponsored by the United States to create
14 a zero-emissions electricity and hydrogen power plant that is:

15 (1) not otherwise eligible to participate in the Clean
16 Coal Development Program;

17 (2) designed to include all of the following:

18 (A) have a nameplate capacity of not greater than
19 300 megawatts gross;

20 (B) be directly interconnected with a
21 participating electric utility; and

22 (C) utilize as its primary fuel or feedstock coal
23 having high volatile bituminous rank and greater than
24 1.7 pounds of sulfur per million Btu content; and

25 (3) has a planned construction start date not later
26 than December 31, 2010.

1 "Participating electric utility" means any Illinois
2 electric utility as defined in the Public Utilities Act that as
3 of the effective date of this Act provides delivery services to
4 more than 100,000 customers in Illinois.

5 "Service agreement" means a service agreement for the sale
6 of electric capacity and associated energy from a clean coal
7 project substantively identical to the pro forma service
8 agreement contained in the applicable wholesale sales tariff.

9 "Total capital cost target" means \$1, as adjusted in
10 accordance with the following:

11 (1) such amount shall be increased by any reasonably
12 estimated increase any total capital costs that results
13 from the core plant construction cost quote, as approved by
14 the ICC, being higher than the core plant construction cost
15 ceiling;

16 (2) such amount shall be decreased or increased, as the
17 case may be, by the amount, if any, by which actual total
18 capital costs are decreased or increased due to positive or
19 negative price escalation provided for under the
20 applicable contract or contracts for the core plant
21 construction, with any escalation in commodity prices
22 being based on published indices;

23 (3) such amount shall be increased by the amount of any
24 additional capital costs that are justly and reasonably
25 incurred due to a change in law or regulation enacted after
26 the date the applicable service agreement is executed by

1 the participating electric utility; and

2 (4) such amount shall be increased by any increase in
3 total capitalized financing costs resulting from a clean
4 coal project not receiving Illinois moral obligation bond
5 financing or tax exempt finance volume cap allocation in
6 the amounts preliminarily approved for such clean coal
7 project by the Illinois Finance Authority or not receiving
8 state grants equal to at least 15% of the total capital
9 cost target.

10 "Wholesale sales tariff" means a schedule of rates, terms,
11 and conditions for the sale of electric capacity and associated
12 energy from a clean coal project filed with FERC by the owner,
13 lessee, or operator of that clean coal project and allowed by
14 FERC to become effective pursuant to Section 205 of the Federal
15 Power Act and Part 35 of FERC's regulations.

16 (220 ILCS 5/21-115 new)

17 Sec. 21-115. Clean coal development program.

18 (a) Each participating electric utility shall purchase
19 electric capacity and associated energy from the owners,
20 lessees, or operators of clean coal projects pursuant to
21 service agreements in accordance with the provisions of Section
22 21-115 of this Article.

23 (b) Upon receipt of an offer from a clean coal project to
24 sell capacity and associated energy pursuant to a wholesale
25 sales tariff, the participating electric utility shall, within

1 30 days after receipt of the pro forma service agreement
2 contained in the wholesale sales tariff, execute the service
3 agreement and file the executed service agreement for
4 informational purposes with the Commission, provided that no
5 participating electric utility shall enter into a service
6 agreement if the amount of capacity to be purchased under such
7 service agreement, together with the aggregate amount of all
8 capacity purchased under other service agreements executed
9 previously or contemporaneously by the participating electric
10 utility from a FutureGen demonstration project, exceeds 8% of
11 the participating electric utility's coincident peak delivery
12 services load, expressed in kilowatts, for the calendar year
13 immediately preceding the effective date of this Article.

14 (220 ILCS 5/21-120 new)

15 Sec. 21-120. Characteristics of the wholesale sales
16 tariff. Subject to the jurisdiction of FERC with respect to the
17 wholesale sales tariff, in order to fulfill the purposes of the
18 Clean Coal Development Program, it is desirable that the
19 formula rate and service agreement have characteristics that
20 are adequate and appropriate to support the long-term
21 investments necessary for the construction and operation of
22 clean coal projects. It is the intent of the General Assembly
23 that:

24 (1) With respect to the formula rate, the following
25 characteristics are adequate and appropriate:

1 (A) the use of a cost of service methodology
2 employing a level or ascending capital recovery
3 component;

4 (B) the use of a hypothetical capital structure, as
5 such structure is used by FERC pursuant to Sections 205
6 and 206 of the Federal Power Act, that assumes a
7 capital structure for a clean coal project of 50%
8 equity and 50% debt;

9 (C) the use of a return on equity that is fixed for
10 the term of the service agreement at a rate equal to
11 the sum of 1 basis point and the rate applicable to
12 30-year, commercial debt instruments bearing a senior,
13 unsecured credit rating by Standard & Poor's of BBB as
14 of the last business day of the month immediately
15 preceding the month in which the service agreement is
16 executed by the participating electric utility; and

17 (D) the use of an incentive and penalty mechanism
18 such that (i) if the actual total capital costs of a
19 given clean coal project exceeds the total capital cost
20 target by greater than 10%, then the return on equity
21 applicable to the portion of the actual total capital
22 costs in excess of 110% of the total capital cost
23 target shall be reduced by 1 basis point (with there
24 being 100 basis points in each percent of return on
25 equity), and (ii) if the actual total capital costs of
26 a given clean coal project are less than 90% of the

1 total capital cost target, then the return on equity
2 for an amount equal to the amount that the total
3 capital cost is less than 90% of the total capital cost
4 target shall be increased by 1 basis point.

5 (2) With respect to the service agreement, the
6 following characteristics are adequate and appropriate:

7 (A) a provision setting forth a term of 30 years
8 commencing on the date upon which the clean coal
9 project achieves commercial operation;

10 (B) a provision incorporating the duties and
11 obligations of the clean coal project and the
12 participating electric utility with respect to the
13 notice and termination mechanism set forth in Section
14 21-145 of this Article;

15 (C) a provision to the effect that a change in law,
16 regulation or market conditions is not a basis for
17 termination or reduction in payments by the purchaser;
18 and

19 (D) provisions for a plant availability target of
20 85% from and after the third full calendar year of
21 operation and an incentive structure for meeting such
22 target, provided that the total bonus in any year for
23 exceeding the target in any year shall not exceed an
24 amount equivalent to 15% of the total return on equity
25 for such year and the total penalty for falling short
26 of such target in any year shall not exceed an amount

1 equal to 15% of the total return on equity for such
2 year; and

3 (E) a provision pursuant to which at the end of the
4 30 year contract term the clean coal project will, upon
5 the request of the Commission or other agency of the
6 State of Illinois authorized to make such request, be
7 transferred for the benefit of ratepayers to a trust or
8 other entity nominated by the Commission or other
9 agency in return for no consideration other than the
10 assumption of the obligation to retire the clean coal
11 project and remediate the site when the clean coal
12 project reaches the end of its useful economic life.

13 (3) With respect to the standard of review under the
14 Federal Power Act of the wholesale sales tariff, it is
15 adequate and appropriate that absent mutual written
16 consent of the participating electric utility and the
17 owner, operator, or lessee of a clean coal project any
18 proposed changes under Sections 205 and 206 of the Federal
19 Power Act to the wholesale sales tariff, including without
20 limitation the formula rate and service agreement, are
21 subject to the "public interest" standard of review as such
22 standard of review is applied by FERC pursuant to sections
23 205 and 206 of the Federal Power Act.

24 To the extent, if any, that a wholesale sales tariff as
25 allowed to be effective by FERC has characteristics in addition
26 to, or different from, those set forth in this Section, such

1 additional or different characteristics shall not alter a
2 participating electric utility's obligation to purchase
3 capacity and associated energy pursuant to wholesale sales
4 tariffs as set forth in this Article.

5 Nothing in this Article shall be deemed to limit the
6 participation of the State, or any agency or political
7 subdivision thereof, or any elected or appointed official of
8 the State of Illinois or any agency or political subdivision
9 thereof, in any FERC proceeding related to a wholesale sales
10 tariff.

11 (220 ILCS 5/21-125 new)

12 Sec. 21-125. Disposition of capacity and energy.

13 (a) Each participating electric utility that executes a
14 service agreement pursuant to the Clean Coal Development
15 Program Law shall resell the capacity and associated energy
16 purchased from a clean coal project to wholesale purchasers in
17 the wholesale capacity and energy markets available to the
18 participating electric utility. The participating electric
19 utility shall use its best efforts to obtain the highest prices
20 for the capacity and associated energy sold pursuant to this
21 Section so as to minimize the costs passed through to the
22 participating electric utility's delivery service customers
23 pursuant to Section 21-130.

24 (b) The participating electric utility shall be in
25 compliance with this Section if:

1 (1) the prices obtained by the participating electric
2 utility are no less than the prices available for the
3 capacity and associated energy if sold into the day-ahead
4 and real time capacity and energy markets administered by a
5 regional transmission organization to which the applicable
6 qualified clean coal project is interconnected; or

7 (2) the participating electric utility otherwise sells
8 the capacity and associated energy pursuant to a plan set
9 forth in a tariff approved by the Commission pursuant to
10 Article IX of the Public Utilities Act.

11 (220 ILCS 5/21-130 new)

12 Sec. 21-130. Pass-through of clean coal development
13 benefits and costs.

14 (a) Because a participating electric utility is required to
15 accept an offer from a clean coal project to sell capacity and
16 associated energy pursuant to a wholesale sales tariff as
17 provided in Section 21-115 of this Article, the participating
18 electric utility is entitled to recover the costs less benefits
19 from its purchases pursuant to the wholesale sales tariff in
20 its retail rates. Each participating electric utility shall
21 pass-through to its delivery services customers the benefits
22 and costs of the Clean Coal Development Program without mark-up
23 as set forth in this Section.

24 (b) Within 60 days after the effective date of this
25 Article, each participating electric utility shall file with

1 the Commission a rider to such utility's tariff that complies
2 with this Section. Such tariff riders shall be subject to
3 Article IX of the Public Utilities Act; provided, however, that
4 the period of suspension of such rider shall not extend more
5 than 75 days beyond the time when such rider would otherwise go
6 into effect and such period of suspension shall not be extended
7 by the Commission. Any proceeding initiated pursuant to Article
8 IX with respect to such rider shall be limited to making a
9 determination that, as a matter of law, the tariff rider
10 complies with the requirements of this section and any such
11 proceeding may not exceed 120 days in length.

12 (c) In order to comply with this Section, a tariff rider
13 shall:

14 (1) apply to all customers to which the participating
15 electric utility provides bundled retail services or
16 retail distribution service;

17 (2) be incorporated onto the participating electric
18 utility's customer bills in the same manner in which the
19 participating electric utility, as of the effective date of
20 this Article, incorporates charges pursuant to Section 6-5
21 of the Renewable Energy, Energy Efficiency and Coal
22 Resources Development Law of 1997; and

23 (3) use an automatic rate adjustment methodology, as
24 such methodology understood pursuant to the Public
25 Utilities Act, having the following characteristics:

26 (A) a "CCDP factor" defined as the factor

1 calculated as set forth in this subsection (c) to
2 represent the net benefit or cost of the Clean Coal
3 Development Program;

4 (B) a "determination period" defined as the
5 calendar month for which a CCDP Factor is determined
6 for the participating electric utility's delivery
7 services customers;

8 (C) an "effective period" defined as the monthly
9 billing period occurring 2 months after the
10 determination period, during which the CCDP factor is
11 applied to kilowatt-hours of energy delivered by the
12 participating electric utility to its delivery
13 services customers;

14 (D) "accrued CCDP expenses" defined as the sum of
15 accrued expenses incurred by the participating
16 electric utility during the determination period
17 pursuant to executed service agreements with clean
18 coal projects;

19 (E) "accrued CCDP revenues" (expressed as an
20 accounting credit) defined as the sum of accrued
21 revenues recorded by the participating electric
22 utility during the determination period associated
23 with the sale of capacity and associated energy by the
24 participating electric utility pursuant to Section 125
25 of this Article;

26 (F) "automatic CCDP balancing factor" defined as

1 the cumulative debit or credit balance, if any,
2 resulting from the application of the CCDP factor from
3 the effective date of the tariff rider through the
4 determination period;

5 (G) "forecast usage" (expressed in kilowatt-hours)
6 defined as the forecast by the participating electric
7 utility of the total energy that the participating
8 electric utility expects to deliver to its delivery
9 services customers during the effective period; and

10 (H) a formula for the determination of the CCDP
11 factor that divides the sum of the CCDP accrued
12 revenues, CCDP accrued expenses, and automatic CCDP
13 balancing factor by the forecast usage.

14 (d) Each participating electric utility shall submit its
15 CCDP factor to the Commission in an informational filing at
16 least 3 business days prior to the start of each effective
17 period during which it is to be applied. In addition, each
18 participating electric utility that is purchasing capacity and
19 associated energy pursuant to a service agreement during a
20 calendar year shall prepare and submit to the Commission an
21 annual report for each calendar year during which such
22 purchases are made, containing the details of the calculation
23 of its CCDP factor on or before the last business day of April
24 of the following calendar year.

1 Sec. 21-135. Affiliate transactions. Notwithstanding any
2 other provision of this Article, if an electric utility or an
3 affiliate of an electric utility has an ownership interest in
4 any eligible facility, Article VII of this Act shall apply.

5 (220 ILCS 5/21-140 new)

6 Sec. 21-140. Certificates of convenience and necessity.

7 (a) If a CCN is required from the Commission for the
8 construction of transmission or pipeline facilities necessary
9 to support interconnection or supplemental fuel supply of a
10 clean coal project, the Commission's order shall be entered (1)
11 within 180 days after the date on which an application for such
12 a CCN has been filed pursuant to Section 8-406 of this Act
13 without a request for an order pursuant to Section 8-503 of
14 this Act; or (2) within 270 days in the case of an application
15 with a request for an order pursuant to Section 8-503 of this
16 Act.

17 (b) In any proceeding conducted by the Commission with
18 respect to a CCN filed pursuant to this Section, intervention
19 shall be limited to parties with a direct interest in the
20 requested CCN and any statutory consumer protection agency as
21 defined in subsection (d) of Section 9-102.1 of this Act.
22 Parties with a direct interest shall include each owner of
23 record of the land that would be crossed by the proposed
24 transmission or pipeline facilities unless the Commission
25 determines that such owner has acquired the land solely for the

1 purpose of becoming a party to the CCN proceeding, and all
2 utilities and railroads whose lines will be crossed by the
3 proposed transmission or pipeline facilities or whose lines
4 will be paralleled within 200 feet by such proposed facilities.
5 Any application seeking rehearing of an order issued in
6 response to an application for a CCN filed pursuant to the
7 Section shall be filed within 10 days after service of the
8 order.

9 (c) The construction of transmission and pipeline
10 facilities necessary to support interconnection or
11 supplemental fuel supply of a clean coal project is in the
12 public interest, and in determining whether to issue an order
13 granting a CCN for construction of such facilities, the
14 Commission shall liberally construe the provisions of this
15 Section in favor of granting a CCN for construction of such
16 facilities.

17 (220 ILCS 5/21-145 new)

18 Sec. 21-145. Termination mechanism. Because (i) the core
19 plant construction cost quote will not likely be known at the
20 time when the applicable service agreement is executed by the
21 participating electric utility and (ii) the clean coal project
22 will likely incur significant costs related to the engineering
23 and design services performed to obtain the core plant
24 construction cost quote, and in order to provide a mechanism
25 for the Commission to review and approve any increase in the

1 anticipated core plant construction costs quote, the following
2 termination mechanism shall apply to all clean coal projects
3 participating in the Clean Coal Development Program:

4 (1) Upon completion of the core plant construction cost
5 quote for a given clean coal project, the clean coal
6 project shall compare its core plant construction cost
7 quote to the inflation-adjusted core plant construction
8 cost ceiling and determine whether its core plant
9 construction cost quote is in excess of the
10 inflation-adjusted core plant construction cost ceiling.

11 (2) If a clean coal project determines that its core
12 plant construction cost quote is in excess of the
13 inflation-adjusted core plant construction cost ceiling,
14 then the clean coal project shall file with the Commission
15 a pleading summarizing its determination that its core
16 plant construction cost quote is in excess of the
17 inflation-adjusted core plant construction cost ceiling
18 and any calculations and work papers related to such
19 determination.

20 (3) Upon receipt of a filing pursuant to Section 21-145
21 of this Article, the Commission shall promptly commence an
22 investigation pursuant to Article X of this Act to
23 determine whether it is in the public interest for the
24 clean coal project to be constructed given the
25 determination that the core plant construction cost quote
26 is in excess of the inflation-adjusted core plant

1 construction cost ceiling. The Commission shall make such
2 public interest determination after hearing evidence
3 limited to the issue of whether the purposes of the Clean
4 Coal Development Program, as set forth in Section 21-105 of
5 this Article, shall be frustrated by the fact that the core
6 plant construction cost quote for the applicable clean coal
7 project is in excess of the inflation-adjusted core plant
8 construction cost ceiling. Any proceeding initiated by the
9 Commission pursuant to this Section may not exceed 120 days
10 in length.

11 (4) If, and only if, the Commission determines that the
12 purposes of the Clean Coal Development Program will be
13 frustrated by the fact that the core plant construction
14 cost quote for a given clean coal project is in excess of
15 the inflation-adjusted core plant construction cost
16 ceiling, then each participating electric utility that
17 executed a service agreement with such clean coal project
18 shall enforce its right to terminate such service agreement
19 and pay the clean coal project as a termination fee the
20 cost incurred by the clean coal project to obtain the core
21 plant construction cost quote. In the event that more than
22 one participating electric utility has executed a service
23 agreement with such clean coal project, then the
24 termination fee applicable to each service agreement shall
25 be allocated in proportion to the amount of capacity
26 contracted for relative to the total capacity contracted

1 for pursuant to all service agreements applicable to such
2 clean coal project. The aggregate of termination fees paid
3 by participating electric utilities to a clean coal project
4 pursuant to this Section shall not exceed \$1.

5 (5) If a participating electric utility terminates a
6 service agreement as contemplated in Section 21-145 of this
7 Article, the participating electric utility shall treat
8 the termination fee paid to the clean coal project as an
9 accrued CCDP expense and recover such termination fee
10 pursuant to the tariff rider set forth in Section 21-130 of
11 this Article.

12 (220 ILCS 5/21-150 new)

13 Sec. 21-150. Participation by a FutureGen demonstration
14 project. A FutureGen demonstration project may elect to be
15 deemed a clean coal project and participate in the Clean Coal
16 Development Program as set forth in this Article and as
17 modified by this Section. A FutureGen demonstration project
18 shall be deemed to have made such election on the date that the
19 FutureGen demonstration project files its wholesale sales
20 tariff at FERC pursuant to Section 205 of the Federal Power
21 Act.

22 No participating electric utility shall enter into a
23 service agreement with a FutureGen demonstration project if the
24 amount of capacity to be purchased under such service
25 agreement, together with the aggregate amount of all capacity

1 purchased under other service agreements executed previously
2 or contemporaneously by the participating electric utility
3 with any FutureGen demonstration project, exceeds 1% of the
4 participating electric utility's coincident peak delivery
5 services load, expressed in kilowatts, for the calendar year
6 immediately preceding the effective date of this Article.

7 Subsections 21-120(1) (other than Subsection 21-120(1)(D))
8 and 21-120(2) shall not apply to the wholesale sales tariff of
9 a FutureGen demonstration project that elects to be deemed a
10 clean coal project. Subsection 21-120(1)(D) and Section 145
11 shall apply to a FutureGen demonstration project. With respect
12 to a FutureGen demonstration project that elects to be deemed a
13 clean coal project, it is the intent of the General Assembly
14 that the wholesale sales tariff of a FutureGen demonstration
15 project recognize that (i) the FutureGen demonstration project
16 may be operated based on objectives different from a baseload
17 generating plant, and (ii) a FutureGen demonstration project is
18 likely to be funded by government appropriations and
19 contributions from non-profit organizations for which
20 traditional ratemaking concepts such as return on invested
21 capital are not appropriate.

22 Section 99. Effective date. This Act takes effect upon
23 becoming law."